

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF SAVITSKIY v. RUSSIA

(Application no. 35839/13)

JUDGMENT

STRASBOURG

8 November 2022

This judgment is final but it may be subject to editorial revision.



In the case of Savitskiy v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Darian Pavli*, President,*

Andreas Zünd*,*

Frédéric Krenc*, judges,*

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the application (no. 35839/13) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 13 May 2013 by a Russian national, Mr Igor Nikolayevich Savitskiy, born in 1956 and living in Pskov ("the applicant") who was represented by Mr Popov, a lawyer practising in Pskov;

the decision to give notice of the application to the Russian Government ("the Government"), initially represented by Mr G. Matyushkin, former Representative of the Russian Federation to the European Court of Human Rights, and later by his successors in this office, Mr M. Galperin and Mr M. Vinogradov, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 11 October 2022,

Delivers the following judgment, which was adopted on that date:

SUBJECT MATTER OF THE CASE

1. On 31 May 2012 during discussion at the Pskov Regional Parliamentary Assembly ("the Assembly") on the revocation of Mr G.'s status of parliamentarian on account of his engaging in unlawful activities, Mr S., one of the parliamentarians, said that the applicant switched too easily from one political party to another. The applicant answered with the following phrase: "I have never been a party-switcher and the entire region is aware of this! The entire region also knows that you have always been G.'s errand boy ("*шестерка*")!". The applicant also stated that he had some testimony that Mr S. had foreign nationality and that a prosecutor's inspection was necessary in this respect. The discussion was broadcasted online.

2. Mr S. sued the applicant for defamation and insult.

3. By decision of 30 August 2012, upheld on appeal by the Pskov Regional Court on 13 November 2012, the Pskov Town Court found that some information about Mr S. mentioned by the applicant was not defamatory but the expression "errand boy" ("*шестерка*") had pejorative connotation and therefore was an insult. The courts based their decision on an opinion of an expert appointed without the applicant's participation. The subject-matter of the discussion was of public interest, however, the applicant's statement

was not relevant to the main issue of debate. They therefore concluded that an uninformed audience watching the session online would understand the applicant's utterance in a pejorative sense. The courts awarded Mr S. compensation in non-pecuniary damage in the amount of 20,000 Russian roubles (RUB).

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

4. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

5. The general principles concerning the right to freedom of expression and protection of reputation have been recently summarized in *Monica Macovei v. Romania*, no. 53028/14, §§ 72-81, 28 July 2020. As regards, in particular, protection of the rights of politicians, the Court has held that while freedom of expression is important for everybody, it is especially so for elected representatives of the people. They represent the electorate, draw attention to their preoccupations and defend their interests. Accordingly, interferences with their freedom of expression call for the closest scrutiny on the part of the Court (see *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, §§ 138-41, 17 May 2016; *Lombardo and Others v. Malta*, no. 7333/06, § 53, 24 April 2007; and *Lewandowska-Malec v. Poland*, no. 39660/07, § 60, 18 September 2012).

6. The court decision in a defamation case against the applicant amounted to an interference with his freedom of expression and this interference was "prescribed by law", namely the Civil Code, applicable at the relevant time. The interference pursued a legitimate aim of protecting the reputation or rights of others.

7. The applicant's statements concerned the alleged link between Mr S. and Mr G. who was prosecuted for unlawful activities. The applicant's statements were capable not only of tarnishing Mr S.'s reputation, but also of causing him serious prejudice in both his professional and his social environment.

8. The criticism in the applicant's comments was directed not at Mr S.'s private activities but rather at his conduct in his political capacity, that is, as an elected parliamentary representative. As such, his conduct in that capacity was clearly of legitimate concern to the general public. In this connection, the Court has already held that the manner in which a locally elected official carries out his or her official duties and issues touching on his or her personal integrity are matters of general interest to the community (see *Kwiecień v. Poland*, no. 51744/99, § 51, 9 January 2007, and *Paraskevopoulos v. Greece*, no. 64184/11, § 36, 28 June 2018) and that there is little scope

under Article 10 § 2 of the Convention for restrictions on political speech or debate on matters of public interest (see *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999-IV, and *Instytut Ekonomichnykh Reform, TOV v. Ukraine*, no. 61561/08, § 44, 2 June 2016).

9. Accordingly, the authorities had a particularly narrow margin of appreciation in assessing the need for the interference with the applicant's freedom of expression (see *Morice v. France* [GC], no. 29369/10, § 125, 23 April 2015).

10. As to the content of the impugned statements, there must be a clear distinction between criticism and insult. In the instant case, the applicant used a vulgar expression "errand boy" (*шестерка*, Russian word for "six" used to indicate a lackey to an authority in prison slang). It seems that his intent was to draw attention to the alleged involvement of parliamentarians in unlawful activities, a matter of public interest. The use of vulgar phrases in themselves is not decisive in the assessment of an offensive expression. For the Court, style constitutes part of the communication as the form of expression and is as such protected together with the content of the expression (see *Uj v. Hungary*, no. 23954/10, § 23, 19 July 2011). Furthermore, persons taking part in a public debate on a matter of general concern are allowed to have recourse to a degree of exaggeration or even provocation, or in other words to make somewhat immoderate statements (see *Do Carmo de Portugal e Castro Câmara v. Portugal*, no. 53139/11, § 43, 4 October 2016). However, the domestic courts found that the above expression had overstepped the acceptable limits of freedom of opinion and infringed the right to reputation of the plaintiff, in that it was humiliating.

11. The domestic courts found that the discussion concerned a question of general interest, but at the same time, they considered that the applicant's remark about Mr S. being an "errand boy" referred to Mr. S.'s private life rather than political activity. They also considered that it was unimportant that the discussion had been held in the parliament, despite the fact that it is a place where the expressions used could often be viewed as polemical, involving a certain degree of exaggeration. Therefore, in their assessment of the impugned statements the domestic courts failed to take any account of the context in which they were made.

12. Finally, when making the award against the applicant, the domestic courts failed to carry out an assessment of its proportionality in relation to the applicant's financial situation and resources. The Court has previously considered it appropriate to use as a relevant comparator the monthly minimum wage ("MROT") which is set and regularly reviewed by the Federal Assembly (see *Tolmachev v. Russia*, no. 42182/11, § 54, 2 June 2020). In 2012 the monthly minimum wage amounted to RUB 4,611 (about 111 euros at the time). Therefore, the sum awarded was far beyond the monthly minimum wage.

13. Under these circumstances, given the status of the applicant and Mr S. as politicians and elected representatives of the people, the overall context of the case and reasoning provided by the domestic courts, the Court considers that the interference with the applicant's right to freedom of expression was not proportionate to the legitimate aim pursued.

14. There has accordingly been a violation of Article 10 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

15. The applicant asked to award him compensation in non-pecuniary damage at the Court's discretion.

16. The Government submitted that no compensation should be awarded.

17. The Court awards the applicant 7,500 euros in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

18. The Court further considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 8 November 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova	Darian Pavli
Deputy Registrar	President